

Yes
2/15/52

February 13, 1952
Op. No. 52-36

Honorable Lee Ackerman
House of Representatives
State Legislature
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Ackerman:

We have your letter of February 7 in which you ask whether or not this office has written an opinion interpreting the residence requirements as set forth in the old age assistance and general assistance statutes. You also ask whether or not, in our opinion, a regulation requiring 25 years residence in each of these categories would be proper.

In answer to your first question, this office has not written a formal opinion on this point. There was a letter written by the Attorney General to the Welfare Commissioner stating an opinion had not been written authorizing a regulation requiring 25 years residence under the general assistance statute.

The pertinent part of the statutes in question reads as follows:

"70-202. Eligibility for assistance to the needy aged.-- Assistance shall be granted under this act to any person who:

1. * * *

2. Is a citizen of the United States."

"70-602. Eligibility for general assistance.
-- No person shall be entitled to general assistance, or to receive employment relief, from any agency supported in whole or in part by the state and any political subdivision thereof who does not meet and maintain the following requirements:

1. Is a citizen of the United States, or a resident of the United States continuously for fifteen (15) years immediately preceding date of application."

The cardinal rule of statutory construction is that one must, if possible, ascertain the intent of the legislature. In re Starks Estate, 82 P. 2d 894, 52 Ariz. 416, the court stated:

"In ascertaining the legislature's intent, the Supreme Court is required to take into consideration the language used, its grammatical construction, other statutes in pari materia, the general policy of the state, and other well known rules of construction."

In considering the language used and the grammatical construction in the quoted part of Section 70-602, supra, one might interpret the section as only setting forth the minimum requirements for general assistance. This section does read in the negative. It states that no person shall be entitled to general assistance * * * who does not meet and maintain the following requirements: It does not state expressly that any person who meets these requirements is eligible for general assistance. The same argument could be advanced in interpreting Section 70-202, supra, except that in that instance the statute is worded in the affirmative and therefore sets the maximum requirements for eligibility to receive old age assistance but does not set the minimum requirements. Some support is given to this construction in examining the eligibility requirements throughout the welfare act. In each category except general assistance, the wording is in the affirmative. That is, assistance shall be granted to any person who meets and maintains the following requirements. While in the general assistance category, the wording is in the negative stating no person shall be entitled to assistance who does not meet and maintain the following requirements. The presumption might be that the legislature had some reason for wording the eligibility requirements in the general assistance statute differently than the eligibility requirements in the other categories.

We believe, however, that the better interpretation of these two sections is that the legislature has set forth the eligibility requirements for assistance in the respective sections and any person who meets all the requirements set forth in Section 70-202 is eligible for old age assistance. If he does not meet these requirements he is not eligible for old age assistance and a person who meets all the requirements set forth in Section 70-602 is eligible for general assistance. One well known rule of statutory construction is the maximum "expressio unius est exclusio alterius" which means, "the expression of one thing in a statute is the exclusion of another." Applying the rule to this particular set

of facts, the expression of the eligibility requirements would exclude any requirements inconsistent therewith.

A construction permitting the Welfare Board to either set the minimum or maximum standards to either section might well be an unconstitutional delegation of legislative power.

In the case of Peters v. Frye, 71 Ariz. 30, 232 P. 2d 176, the Arizona court states at page 35:

"Delegation of power to make the law is forbidden as necessarily involving discretion as to what the law shall be, but there can be no valid objection to a law which confers an authority or discretion as to its execution, to be exercised under and in pursuance of the law itself. 'The true distinction * * * is this: The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend.' Locke's Appeal, supra (72 Pa. 491, 508, 13 Am. Rep. 716)."

Also in Hernandez v. Frohmler, 68 Ariz. 242, 204 P. 2d 854, the court stated:

"The legislature may, however, leave to administrative officers, boards and commissions, the duty to determine whether the facts exist to which the law is itself restricted. In all such occasions, nevertheless, the legislative body must surround such authority with definite standards, policies and limitations to which such administrative officers, boards or commissions, must strictly adhere and by which they are strictly governed.
* * *

When two constructions can be given to a statute, every effort should be made to avoid making the statute unconstitutional; also the legislative history of Section 70-602 reveals that when the bill was first introduced, the resident requirement was twenty-five (25)

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years. An amendment from the floor of the house of representatives changed the residence requirement to ten (10) years. The bill was finally passed with the resident requirement at fifteen (15) years. This history of the act is at least some indication that the house of representatives did not intend to set only the minimum eligibility requirements for general assistance.

For these reasons, in our opinion, the better construction of Section 70-202 prohibits the welfare board from making a regulation permitting persons not citizens of the United States to receive old age assistance and the most logical construction of Section 70-602, supra, would prohibit the welfare board from making a regulation requiring applicants to be residents of the United States for twenty-five (25) years, in place of the fifteen (15) years stated in the statute.

Very truly yours,

FRED O. WILSON
Attorney General

KENT A. BLAKE
Assistant Attorney General

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